

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

January 8, 1999

Dear Mr. Xxxxx:

This letter is in response to your email dated December 7, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

My name is PERSON and I work for a mail order pharmacy located in CITY IL. We mail prescription drugs to employees of schools and municipalities and bill the school or municipality for the cost of the medication.

We have clients that are school districts and municipalities that would like to evoke their right not pay taxes on the prescription drugs that we bill to them. They provide the following support for their statement.

The schools, municipalities and I have called the Illinois Department of Revenue customer support line and have been told that for the following reasons they are considered tax exempt:

a. The employer self-funds the health care plan within the state of Illinois. Self-fund means they set aside monies to pay for health care expenses in a bank account and pay all health care expenses from that fund. This fund pays COMPANY for all prescriptions dispensed to employees on a bi-weekly basis. The employee only pays COMPANY a copay of usually \$5.00 or \$10.00.

b. Like Medicare, the payer is tax exempt. Prescriptions provided to enrollees of Medicare are not taxed.

c. The participant receiving the prescription is not paying for the prescription, the employer is.

d. The employer has provided a copy of their certificate with a letter requesting to evoke their right.

I am requesting a letter from the state providing COMPANY a clear statement that we do not have to charge tax exempt employer sponsored health care plans the 2% tax.

My phone number is ####

Thank you very much for your help in this matter.

Please note that organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification "E" number. See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that this State recognizes that the organization qualifies as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of its organizational purpose. Sales to a governmental body are subject to tax unless the governmental body has an active exemption identification "E" number. See the enclosed copy of 86 Ill. Adm. Code 130.2080. If an organization or governmental body does not have an "E" number, then its purchases from your company are subject to tax. Please be aware that only sales to the organization or governmental body holding the "E" number are exempt, not sales to individual members of the organization.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax. The tax consequences of the transactions you describe depend upon many factors. Explanation of your precise liabilities cannot be made in the context of a General Information Letter and without detailed information. However we hope the following information is useful to you.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to

be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. This class of registered de minimis servicemen also collects the corresponding Service Use tax from their customers absent exemptions. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

If pharmacies are unregistered de minimis servicemen, then they are considered the user of the tangible personal property that they transfer incident to their sale of service. Unregistered de minimis servicemen are not allowed a pass through of exemptions. In this case, if an exempt organization purchased pharmaceuticals from an unregistered de minimis serviceman, the sales to the exempt organizations would not be exempt.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.